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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.C., a Person Coming  
Under the Juvenile Court Law.

B296846  
(Los Angeles County  
Super. Ct. No. DK17464)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

TIFFANY C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Etan Z. Lorant, Temporary Judge.  
(Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Cristina Gabrielidis, under appointment by the  
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Mother has eight children. Seven were removed from mother's custody prior to the current proceedings. Their ages range from 6 to 23. This appeal concerns only mother's eighth child, K.C., who was three years old when dependency proceedings commenced.

On appeal, mother challenges the termination of her parental rights. Mother argues that she demonstrated an exception to the termination of parental rights on the ground that she maintained regular visitation with K.C. and K.C. would benefit from continuing his relationship with mother (beneficial relationship exception). (Welf. & Inst. Code,<sup>1</sup> § 366.26, subd. (c)(1)(B)(i).)

In the juvenile court, mother did not demonstrate that her relationship with K.C. promoted K.C.'s well-being “ ‘to such a degree as to outweigh the well-being . . . [K.C.] would gain in a permanent home with new, adoptive parents.’ ” ” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)). Accordingly, we affirm the order terminating mother's parental rights.

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code.

## **BACKGROUND**

Mother lived in Arizona when her oldest seven children were removed from her care. According to her, they were removed because she used cocaine and was an alcoholic. Mother admitted that she had a criminal history in Arizona.

K.C.'s biological father D.J. never had custody of K.C., and D.J. is not a party to this appeal. Social workers did not frequently interview K.C., but at the outset of the proceedings, K.C. reported: "I am 3 years old and my mommy is gone. My dad's name is [T.A.]. That's all."

During a portion of the dependency proceedings, K.C. lived with his maternal grandmother. The Department of Children and Family Services (DCFS) placed K.C. in a prospective adoptive home after maternal grandmother reported that she and mother had a physical altercation and, as a result, maternal grandmother no longer wanted custody of K.C. Maternal grandmother reported that mother took K.C. from maternal grandmother's custody (in violation of the juvenile court's visitation order) and that mother threatened maternal grandmother. Maternal grandmother reported that none of mother's relatives wanted custody of K.C. because they were concerned about conflicts with mother. K.C.'s prospective adoptive parents are Mr. and Mrs. H.

### **1. First Amended Petition**

On July 1, 2016, the Department of Children and Family Services filed a section 300 petition. Most of the allegations concerned mother's male companion T.A. with whom mother and K.C. were living.

The amended petition alleged T.A. suffered two criminal convictions of lewd or lascivious acts with a child under 14 years of age. T.A. was a registered sex offender who had been ordered to refrain from having contact with any children. The petition alleged that mother knew about T.A.'s criminal history and failed to protect K.C. by allowing T.A. to live with her and K.C.

Mother submitted on the amended petition, and the juvenile court sustained the above-described allegations. DCFS recommended that mother receive reunification services because, when the proceedings started, it appeared that mother and K.C. shared a positive bond.

## **2. T.A.**

In 1989, T.A. committed murder and robbery when he was a juvenile. In 2010, as an adult, T.A. was convicted of lewd or lascivious acts with a child under 14. T.A. sexually abused his three step-children when they were ages 7, 9, and 11. Approximately one month before the dependency proceedings began, T.A. was arrested for rape. T.A. was not charged for the rape because the complaining witness was unavailable to testify against him.

At the time the dependency proceedings commenced, July 1, 2016, T.A. lived with mother and K.C. T.A.'s personal belongings including clothing were in mother's residence. Mother told a social worker that T.A. resided with mother and K.C. T.A. was on parole and his ankle monitor had a GPS tracker, which showed that he was at mother's apartment "all the time."<sup>2</sup>

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<sup>2</sup> It appears that T.A. was on parole after serving time for his conviction for lewd or lascivious acts with a child under 14. The record, however, does not state the specific basis for parole.

During the dependency proceedings, T.A. acknowledged he was forbidden to be around children and admitted he had been convicted of homicide. T.A. signed a statement that he was not K.C.'s father and did not want to participate in the dependency proceedings. T.A. was removed as a party in the juvenile court and is not a party on appeal.

In February 2017, T.A. sent K.C. toys. T.A. wrote a note indicating that he heard K.C. requested the toys. In September 2017, T.A. was incarcerated.

### **3. Mother's Conduct During the Dependency Proceedings**

When a social worker told mother that T.A. sexually abused his three step-children, mother was incredulous and responded that T.A. " 'doesn't do those things.' " When T.A.'s parole agent informed mother that T.A. was a registered sex offender, mother asked, " '[W]hat if we get married?' " Mother told the social worker she and T.A. planned to marry after T.A. finished his parole.

Mother later stated that she would end her relationship with T.A. to prioritize her relationship with K.C.<sup>3</sup> Despite this

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<sup>3</sup> In response to the detention report, mother filed an affidavit stating she was unaware of T.A.'s criminal history and conditions of parole. Mother subsequently told social workers that she did not learn of T.A.'s background until she read the detention report. Later, however, mother acknowledged that she was aware T.A. was a registered sex offender, but she "continued to deal with Mr. [A.] because I loved him and he had done so much to enhance our lives. Plus we have invested so much time and energy in each other that I did not see anything criminal about him." (*Italics omitted.*) "Besides that us being in love with

representation, mother did not end her relationship with T.A. In December 2016, mother was arrested for inflicting corporal injury on a spouse or cohabitant. The arrest followed an altercation between mother and T.A. After officers placed mother in custody, mother stated that T.A. previously physically abused her. According to mother, she and T.A. argued, and T.A. “grabbed her by both arms and shoved her to the floor, causing her to fall to the ground, and to land on the right side of her body. As a result, she sustained bruising to her right upper arm.” Mother stated that “she did not call the police because she did not want to have him [T.A.] arrested.”

In July 2016, mother enrolled in individual psychotherapy with a focus on sexual abuse awareness and parent education. In August 2016, mother’s therapist reported that mother wanted to provide a safe, healthy environment for K.C. Mother enrolled herself in a parenting class and completed a 12-week parenting class. Mother consistently tested negative for controlled substances. Mother completed several online classes, but DCFS had told mother that “online classes are not sufficient and will not be accepted by the Department.”

Mother stopped attending her individual therapy sessions. Mother later told a social worker that she reenrolled in therapy. A social worker observed that although mother attended therapy, “she has not gained the insight necessary to ensure that she will not place her son at risk again.”

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each other I was blind to any bad vibes or accusations when it came to” T.A. (*Italics omitted.*) “I feel terrible because I should have ended my relationship with [T.A.] as soon as I found out he was a RSO [registered sex offender] rather [*sic*] guilty or not.” (*Some italics omitted.*)

At some point, mother moved, but she did not alert social workers of her move. Mother stated that she moved to be closer to K.C., but mother refused to provide an updated address.

In August 2017, mother was arrested for vehicle embezzlement and possession of a stolen vehicle. The police report indicated that mother did not return a vehicle she had rented.

In January 2018, DCFS reported that mother did not consistently attend therapy. In January 2018, DCFS reported that mother has “failed to demonstrate that she has any insight into the risk of sexual abuse and neglect that brought her to the attention of the department. Mother appears to have some form of contact with Mr. [A.] as she has provided CSW up to date information regarding his actions and whereabouts.”

Mother wrote a letter stating that K.C. was traumatized by being separated from mother. Mother represented that K.C. was unhappy, and had regressed and gained weight. Mother claimed that it was in K.C.’s best interest to be returned to her custody. Mother further stated: “Unfortunately I fell in love with a man that is a RSO [registered sex offender] and I should of broke off our relationship as soon as I discovered he was Registered, which was in May 2016.” “I continued to deal with Mr. [A.] because I loved him and he has done so much to enhance our lives. Plus we have invested so much time and energy in each other that I did not see anything criminal about him.”

#### **4. Mother’s Visits With K.C.**

In August 2016, mother was allowed unmonitored visits. She also was allowed overnight visits in the home of the maternal grandmother. In March 2017, DCFS reported that mother visited two or three times a month. Maternal grandmother reported

that K.C. talked about mother and sometimes cried when mother's visit ended. In April and May 2017, mother visited K.C. and maternal grandmother reported that K.C. missed mother when mother left. In her unmonitored visits, mother would take K.C. to McDonald's, swimming, the mall, or a playground.

In March 2017, DCFS sought to change the juvenile court's order to require mother's visits be monitored. Maternal grandmother indicated that mother continued to have contact with T.A. T.A. would participate in "FaceTime" calls with K.C. When asked about T.A., mother stated that she did not have proof of his convictions. Additionally, mother stopped consistently attending therapy.

In April 2017, the court ordered mother to have monitored visits. Also in April 2017, maternal grandmother reported that K.C. misses mother and wanted her to stay when her visits ended. Mother violated the court order and had unmonitored contact with K.C. In October 2017, DCFS reported that mother was not in "full compliance with visitation orders."

In July 2018, a social worker learned that mother would threaten maternal grandmother and take K.C. from maternal grandmother's custody.

Social workers reported that mother and K.C. enjoyed playing together. Mother would bring food and toys for K.C. Mother and K.C. would hug and kiss. After visiting with mother, K.C. frequently was unable to control his bowels. He defecated in his pants at the end of his visits with mother. K.C.'s prospective adoptive parents speculated that the visits may cause K.C. anxiety, but that speculation was not confirmed. The encopresis, K.C.'s inability to control his defecation, may have been caused by K.C.'s overconsumption of food during his visits with mother.

K.C.'s caregivers requested that mother's phone conversations with K.C. be diminished because K.C. would act out after contact with mother.

In March 2019, DCFS reported that mother visited K.C. twice a month. Mother's visits remained monitored. "During visits with the child[,] Mother continues to have difficulty following visitation terms and guidelines and requires redirection. A recent visit that was being monitored . . . had to be terminated as mother was becoming argumentative, threatening the monitor, . . . ."

## **5. K.C.'s Prospective Adoptive Parents**

K.C. lived with his prospective adoptive parents, the H.'s, since May 2018, and the H.'s wanted to adopt K.C. The H.'s provided K.C. with a "safe and emotionally nurturing home." The H.'s participated in "child centered activities" and took classes on adoption and parenting. DCFS reported that "Mr. and Mrs. H. have developed a loving and nurturing relationship with [K.C.]. Mr. and Mrs. H. have integrated him into their family and have demonstrated the means and the will to providing a life-time commitment to" K.C.

In September 2018, a social worker reported that K.C. "appears to be well cared for, happy, healthy, and well bonded with all members of the household." "Prospective adoptive parents appear to provide the child with his basic needs. They appear to be loving towards the child, appear to have the child's best interest in mind, and appear to be fully committed in adopting" K.C. K.C. "appears to have a bond with both Mr. and Mrs. H." The social worker "also observed both Mr. an[d] Mrs. H[.] to be calm and loving when interacting with the child and

speaking to the child in a calm tone of voice, even when correcting the child's behavior."

In October 2018, DCFS reported that the H.'s would provide K.C. "with a stable, loving home environment that meets the child's needs in all respects." The H.'s "interact and communicate well with the child." The H.'s "have developed a loving and nurturing relationship with [K.C.]. Mr. and Mrs. H. have integrated him into their family and have demonstrated the means and the will to provide[ ] a life-time commitment to" K.C.

K.C. reported that he "enjoys" living with the H.'s and "feels safe" in their home. K.C. referred to Mr. and Mrs. H. as dad and mom.

In March 2019, DCFS reported that K.C. "appears to be well cared for, happy, healthy, and well bonded with all members of the household." The H.'s treated K.C. with love.

Mother made allegations of general neglect against the H.'s. DCFS investigated the allegations and concluded that they were unfounded.<sup>4</sup>

## **6. Juvenile Court's Findings**

Mother did not appear at the section 366.26 hearing. No witness testified at the section 366.26 hearing. Mother's counsel argued that mother was consistent in her visitation and that mother had a strong connection to K.C. K.C.'s attorney argued that mother's parental rights should be terminated.

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<sup>4</sup> When K.C. was placed with maternal grandmother, mother called the police for a " 'well check' " stating that maternal grandmother was not caring for K.C. When living with the H.'s, K.C. alleged that another child in his home touched his penis, but later admitted that this statement was a lie.

K.C.’s attorney pointed out that K.C. calls his prospective adoptive parents mom and dad.

The court found the benefit of adoption “far outweighs the benefit of a relationship with the mother.” This timely appeal followed.

## DISCUSSION

The purpose of a section 366.26 hearing is to provide a permanent home for dependent children, and the Legislature has identified adoption as the preferred plan. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 645.) The juvenile court must order adoption unless it identifies an enumerated exception to adoption. (*Ibid.*) In this case, mother argues that the following statutory exception required the juvenile court to select legal guardianship rather than adoption as the children’s permanent plan: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) This exception applies “ ‘only in an extraordinary case.’ ” (*Breanna S.*, at p. 646.)

The juvenile court concluded that this was not a rare case in which the exception applies. Regardless of whether the standard of review of the juvenile court’s order is for substantial evidence or abuse of discretion, the result is the same.<sup>5</sup> (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166

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<sup>5</sup> In *In re K.P.* (2012) 203 Cal.App.4th 614, the court explained that whether a beneficial parental relationship exists is reviewed for substantial evidence. In contrast, whether the relationship constitutes “ ‘a compelling reason for determining that termination would be detrimental to the child’ ” requires

[applying substantial evidence standard of review]; but see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [applying abuse of discretion test].) Both standards of review call for a high degree of deference. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.)

Assuming that mother maintained consistent visitation with K.C., substantial evidence supported the juvenile court's conclusion that K.C.'s relationship with mother was not so significant that preserving it outweighed the benefits of adoption. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 [the "question is whether that relationship remained so significant and compelling in [the child's] life that the benefit of preserving it outweighed the stability and benefits of adoption"]; see also *In re Collin E.* (2018) 25 Cal.App.5th 647, 664.)

Although K.C. lived in mother's custody for three years, he lived outside her custody almost as long. At the time of the section 366.26 hearing, mother's visits were monitored, and she occupied the role of a playmate, not a parent. During the dependency proceedings, mother never demonstrated that she could keep K.C. safe or that she developed insight into the concerns underlying the dependency petition. Mother initially enrolled in therapy and she promised to stay away from T.A. Mother, however, subsequently dropped out of therapy, and she maintained contact with T.A. Mother also permitted T.A. to FaceTime with K.C.

Other than her own statements, mother points to no evidence that she had a strong bond to K.C. at the time the

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application of the abuse of discretion standard. (*Id.* at p. 622; see also *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.)

juvenile court was required to apply the beneficial relationship exception. Evidence that K.C. initially missed mother after her visits was overshadowed by evidence that, at the time of the section 366.26 hearing, K.C. no longer reported missing mother. At the time of the section 366.26 hearing, K.C. experienced encopresis following his visits with mother and acted inappropriately after talking to her on the phone. Although he enjoyed playing with mother, he no longer cried when the visits ended.

The evidence strongly supported the juvenile court's conclusion that K.C. would benefit from the permanent plan of adoption. K.C. developed a bond with his foster parents, calling them mom and dad. The H.'s provided K.C. a loving and stable home, and K.C. was integrated into their family. K.C. reported that he enjoyed living with his prospective adoptive parents and felt safe in their home. On balance, mother's relationship with K.C. was not so significant in K.C.'s life that preserving it outweighed the benefits of adoption. The juvenile court did not err in terminating mother's parental rights. (See *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 622–623.)

Mother's contrary argument is based on a view of the evidence in the light most favorable to her. Even under mother's view of the evidence, which is at odds with the standard of review, mother demonstrates only that she had frequent and loving contact with K.C. To establish the beneficial relationship exception, mother was required to "do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that . . . [mother and K.C.] find their visits pleasant." (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) Mother had to show that her relationship with K.C. " 'promotes the well-being

of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’” (*Id.* at p. 1109; see also *Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) Mother does not argue she could satisfy that standard and the record shows she did not make that showing at the section 366.26 hearing. (See *Breanna S.*, at p. 646 [parent has the burden to demonstrate statutory exception applies].)

### **DISPOSITION**

The order terminating mother’s parental rights is affirmed.  
NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.